

OPTION AGREEMENT

CASH CREEK GENERATION, L.L.C., OPTIONOR COMMONWEALTH OF KENTUCKY, COMMERCE CABINET, OPTIONEE

THIS OPTION AGREEMENT ("Agreement"), entered into as of May 3, 2006 by and between CASH CREEK GENERATION, L.L.C., c/o The ERORA Group, L.L.C., whose address is, 4350 Brownsboro Road, Suite 110, Louisville, Kentucky 40207, as Optionor ("CASH CREEK"); and the COMMONWEALTH OF KENTUCKY, for the use and benefit of the Commerce Cabinet, Office of Energy Policy, acting by and through Robbie Rudolph, Jr., Secretary, Finance and Administration Cabinet, as OPTIONEE". GREEN GEM, LLC, a Nevada limited liability company ("GREEN GEM"), joins herein to acknowledge its consent to this Agreement.

WITNESSETH:

WHEREAS, GREEN GEM and PENN VIRGINIA OPERATING CO., LLC, a Delaware limited liability company ("Penn Virginia") own certain real property located in eastern Henderson County, Kentucky bordered by the Green River, including, without limitation, a portion of the property acquired from Reynolds Metal Company by Deed dated April 30, 1997, of record in Deed Book 467, page 277, in the office of the Henderson County Clerk (the "Property");

WHEREAS, CASH CREEK is a party to a certain Amended and Restated Option Agreement (the "Master Option"), dated July 19, 2005, by and among GREEN GEM, CASH CREEK and Penn Virginia, pursuant to which CASH CREEK has the right to acquire approximately 1,920 acres of real property located in eastern Henderson County, Kentucky (the "Master Tract") and certain easements over the Property other than the Master Tract (the "Remaining Property");

WHEREAS, CASH CREEK has exercised its option to acquire the Master Tract;

WHEREAS, OPTIONEE has the statutory responsibility for effective implementation of Kentucky's Comprehensive Energy Strategy;

WHEREAS, OPTIONEE intends to submit a proposal, offering a portion of CASH CREEK'S property as the proposed site for the "FutureGen" project, a government-industry cost-shared project to design, build, and operate the world's first coal-based, near-zero emission power plant;

WHEREAS, both CASH CREEK and OPTIONEE have entered into a Memorandum of Agreement, dated March 9, 2006, outlining each party's responsibilities with regard to a cooperative effort in attracting "FutureGen" to Kentucky and working to make it a success, by offering a portion of the property upon which CASH CREEK has an option to acquire as the proposed site for the "FutureGen" project;

WHEREAS, the Request for Proposals (“RFP”) for “FutureGen Facility Host Site”, Section 3, Subsection 1.1.3. Control, states, “The offeror must provide proof that the proposed power plant site is or will be available for the proposed use...”;

WHEREAS, in order to attempt to fulfill the aforementioned RFP requirement, OPTIONEE desires to obtain from CASH CREEK an option to acquire an approximate 212 acre portion (the “FutureGen Tract”) of the Master Tract as further described in Exhibit A attached hereto;

WHEREAS, OPTIONEE intends to offer in OPTIONEE’S proposal to FutureGen Industrial Alliance, Inc., the FutureGen Tract as the “FutureGen” site, should OPTIONEE’S proposal be selected, for the site of the “FutureGen” facility; and,

WHEREAS, CASH CREEK intends to construct an integrated gasification combined cycle facility on a separate portion of the above described land, including infrastructure, which could result in efficiencies/economies of scale that may greatly enhance OPTIONEE’s ability to attract the “FutureGen” project to Kentucky;

NOW, THEREFORE, in consideration of \$1.00, cash in hand paid, and in exchange for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, it is mutually agreed by and between CASH CREEK and OPTIONEE, subject to the following conditions, that:

1. **OPTION.** CASH CREEK hereby grants to OPTIONEE an option to acquire the FutureGen Tract subject to the terms and conditions set forth herein (the “FutureGen Option”), including all of the rights and privileges belonging to CASH CREEK appurtenant to the surface property comprising the FutureGen Tract and any buildings, structures, fences and other fixtures and improvements of CASH CREEK located on the FutureGen Tract (the “Improvements”). The parties acknowledge and agree that no moveable equipment or other personal property of any nature is covered by this Agreement or included in the property to be purchased and acquired hereunder.

CASH CREEK agrees to sell the FutureGen Tract to OPTIONEE for a price equal to \$2,000 per acre (the “Purchase Price”). The exact acreage is to be determined based on the survey described in Section 10 below.

2. **CLOSING.** If OPTIONEE desires to exercise its option to acquire the FutureGen Tract, then it shall provide written notice to CASH CREEK stating (i) that OPTIONEE intends to exercise its option and (ii) specifying a date of closing, which shall be not less than 60 days after the date of the notice and not more than six (6) months after the date of the notice. The Option may not be orally exercised.

- a. At the Closing, CASH CREEK shall duly execute, acknowledge and deliver a deed conveying the FutureGen Tract to OPTIONEE with covenant of special warranty, subject to all of the matters referred to in Section 3 and elsewhere in this Agreement, and OPTIONEE shall pay the Purchase Price in full by wire

transfer or other means reasonably acceptable to CASH CREEK. The aforesaid deed shall be in recordable form and shall be reasonably satisfactory in form and substance to OPTIONEE. CASH CREEK will also execute and deliver an affidavit with respect to the FutureGen Tract regarding the absence of mechanics' liens and other potential claims as required for title insurance purposes and the appropriate tax forms, and the parties will execute and deliver a closing statement and such other documents as may reasonably be required to effect the Closing. The current year's ad valorem property taxes on the FutureGen Tract will be prorated between buyer and seller on a calendar year basis as of the date of the Closing, with CASH CREEK to be responsible for all such taxes for all prior years and OPTIONEE to be responsible for all such taxes in subsequent years. Other closing costs shall be borne by the parties as is customary in Kentucky, with CASH CREEK to pay the real property transfer tax in connection with the sale of the FutureGen Tract, OPTIONEE to pay the premium and other costs of title insurance if it desires to obtain such insurance, and each party to bear its own legal fees and expenses.

- b. OPTIONEE shall be responsible for obtaining at its expense prior to the Closing the necessary approvals of the Henderson County Planning Commission and other governmental authorities required for the subdivision of Property to create the FutureGen Tract and for the conveyance of the FutureGen Tract as a separate and discrete parcel of land to OPTIONEE.

3. **TITLE.** At the Closing, CASH CREEK will, if OPTIONEE exercises the Option, convey the FutureGen Tract to OPTIONEE subject to all of the following:

- a. All matters of record as of the date of Closing.
- b. All matters which a thorough and complete inspection of the Master Tract and the FutureGen Tract would disclose, including, without limitation, active and abandoned oil and gas wells, pipelines, pole lines, cemeteries and mine workings, and all matters which an accurate and complete survey of the Property would reveal, including inaccurate or inadequate property descriptions, boundary line discrepancies, encroachments, strips and gores.
- c. All zoning and other federal, state and local laws and governmental rules and regulations regarding land use and development or otherwise applicable to the FutureGen Tract.
- d. The matters referred to in the following five (5) sections of this Agreement.

4. **OIL AND GAS.** CASH CREEK does not own the oil and gas rights with respect to any of the Property. Accordingly, the oil and gas rights will be excepted from all

conveyances to be made to OPTIONEE at the Closing in the event OPTIONEE exercises the Option. The third parties owning the oil and gas rights with respect to the Property have the right to exercise such rights and to exploit the oil and gas in and under the Property in accordance with the terms of the severance and other instruments relating to the Property's oil and gas estate and as generally permitted by law. There are both active and abandoned oil and gas wells on the Property. The foregoing provisions of this section notwithstanding, Penn Virginia believes that it does own the coal bed methane in and underlying the FutureGen Tract. Any exploration and production of such coal bed methane shall be governed by the provisions of the following section.

5. COAL AND OTHER MINERALS. In its conveyances to OPTIONEE at the Closing, if OPTIONEE exercises the Option, all of the coal, hydrocarbons and other minerals of every nature in and underlying the surface of the FutureGen Tract, together with all necessary, convenient and customary rights to explore for, exploit, produce, extract, process and remove all such coal, hydrocarbons and other minerals, subject to the conditions set forth below in this section, will be reserved and excepted from the conveyance. Green Gem and Penn Virginia have reserved all rights to use the surface of the FutureGen Tract in exploring for, producing, processing and transporting away coal bed methane from coal seams under the FutureGen Tract or other property in the vicinity owned or controlled by Green Gem or Penn Virginia. Green Gem and Penn Virginia also have the right to transport coal and other minerals from other properties across the FutureGen Tract without payment of any wheelage or other charge. Anything to the contrary notwithstanding however, neither Green Gem nor Penn Virginia or its lessees shall have the right to conduct open-pit, strip mining or similar surface mining operations on the FutureGen Tract, but may locate and use portals, air shafts, utility lines, roadways, pipelines and similar improvements on the FutureGen Tract in the course of mining and other extraction operations on or under the FutureGen Tract or on other properties in the vicinity owned or controlled by Green Gem or Penn Virginia, but further provided that Green Gem and Penn Virginia shall not exercise any of the aforesaid rights in a manner which unreasonably interferes with OPTIONEE's plans for the construction or operation of the FutureGen Facility. The provisions of this section shall run with the land and be binding upon, and inure to the benefit of, not only Green Gem, Penn Virginia and Cash Creek, but also their successors and assigns.

6. USE OF TRACT PRIOR TO CLOSING; IMPROVEMENTS. During the term of this Agreement and through the date of Closing, CASH CREEK shall have the right to use the FutureGen Tract it owns in such manner as it sees fit, and retain all of the profits and proceeds from so doing, provided that CASH CREEK shall not take any action which materially reduces the value of the FutureGen Tract for the use intended. In particular, but without limitation, CASH CREEK, may lease the Tract on a year-to-year basis for farming and agricultural purposes to one or more tenants and may harvest any

marketable timber from the FutureGen Tract. If OPTIONEE exercises the Option, CASH CREEK will convey the FutureGen Tract to OPTIONEE subject to any farming and agriculture leases and timbering arrangements relating to the FutureGen Tract then in effect, providing that all such leases and arrangements must either expire or be terminable without penalty by OPTIONEE within one (1) year of the Closing. The rents and profits under any such leases and agreements shall be reserved to CASH CREEK. CASH CREEK will not take any action, nor to the extent reasonably within its control, allow any third party to take any action, creating a material environmental hazard on the FutureGen Tract requiring immediate clean-up, abatement or remediation at the time prior to the Closing. The Improvements, if any, are of no value to OPTIONEE and need not be maintained or preserved by CASH CREEK. If OPTIONEE exercises the Option, CASH CREEK will, at the Closing, convey and assign the Improvements to OPTIONEE "AS IS" and with all defects patent and latent. Neither the removal or destruction of, nor any damage to, any of the Improvements shall in any way reduce or otherwise affect the Purchase Price.

7. **PATRIOT.** The FutureGen Tract is subject to a coal mining lease (the "Coal Lease") granted by Kentucky Emerald Land Company, LLC to Patriot Coal Company LP ("Patriot") and will be conveyed by CASH CREEK to OPTIONEE subject to the Coal Lease if OPTIONEE exercises the Option. Patriot has completed mining the coal demised by the Coal Lease underlying the FutureGen Tract and is in the process of completing the reclamation of the FutureGen Tract. The FutureGen Tract shall remain subject to the Coal Lease until at least such time as the reclamation bond under Patriot's surface coal mining permits covering the FutureGen Tract or portions thereof are all released. Construction on the FutureGen Tract cannot begin until the Henderson County and Commonwealth of Kentucky reclamation bonds under Patriot's permits are released. If OPTIONEE exercises the Option, OPTIONEE will work with Patriot to have its bonds released as quickly as possible, which may be by way of having the post-mining land use of the FutureGen Tract under such bonds changed to heavy industrial. Patriot also has the right under the Coal Lease to construct, maintain and use roadways, utility lines, sedimentation control basins and similar improvements and facilities on the FutureGen Tract in connection with its coal mining operations on other portions of the Property. OPTIONEE agrees that in the event it exercises the Option and completes the purchase of the FutureGen Tract, OPTIONEE will in good faith work with Patriot and cooperate with Patriot to the extent reasonably possible in connection with Patriot's continuing operations on the FutureGen Tract.

OPTIONEE acknowledges and agrees that the conveyor and associated access road serving the Patriot mine lies outside of the FutureGen Tract.

8. ZONING AND PERMITS. OPTIONEE shall be solely responsible for obtaining all governmental permits, licenses, approvals, clearances and consents necessary in connection with its intended use of the Property ("Permits").

9. EASEMENTS. CASH CREEK agrees that it will, in good faith, work with OPTIONEE to acquire for OPTIONEE, at OPTIONEE's expense, such easements as OPTIONEE may reasonably require for its intended use of the FutureGen Tract provided; (i) that such acquisition and/or use does not interfere with CASH CREEK's ability to secure Easements for CASH CREEK's intended use or CASH CREEK's use of such Easements and (ii) that CASH CREEK makes no representation or warranty respecting the availability of such Easements.

10. SURVEY AND TITLE SEARCH. Prior to purchasing the FutureGen Tract, OPTIONEE shall, at its expense,

- a. have the Property surveyed by a surveyor chosen from the list of state-approved surveyors. OPTIONEE agrees to provide CASH CREEK with a copy of such survey.
- b. contract for a certified copy of all title searches/legal documentation for the cure of title issues/defects, environmental reviews, and surveys for review by the Office of Legal Services for Finance and Technology, whose address is 702 Capitol Avenue, 188 Capitol Annex, Frankfort, Kentucky 40601.

11. CASH CREEK PERMITTING. OPTIONEE acknowledges and agrees that CASH CREEK intends to include the FutureGen Tract within its "fence line" for air permitting purposes. The parties agree that if the sale of the FutureGen Tract could jeopardize the attainment of any permits necessary for CASH CREEK's planned use of the Master Tract, as determined by CASH CREEK in its sole discretion, then in lieu of a sale of the FutureGen Tract to OPTIONEE, this Agreement will be deemed to be an option to enter into a 99 year ground lease, with normal and customary provisions, including appropriate indemnification provisions in favor of CASH CREEK, its successors and assigns (including parties providing financing).

12. COMMONWEALTH REQUIREMENTS. The acquisition of this FutureGen Tract shall comply with:

- (a) The Kentucky Model Procurement Code (KRS Chapter 45A);
- (b) The Executive Branch Code of Ethics (KRS Chapter 11A);
- (c) All laws relating to nondiscrimination;
- (d) All laws relation to protection of the environment; and
- (e) All other laws applicable to real property acquisition and the acquisition of services related to real property acquisition.

13. LIMITED ASSIGNMENT. This Agreement may be assigned by OPTIONEE solely to FutureGen Industrial Alliance, Inc., and contingent solely upon OPTIONEE'S chosen site being selected as the "FutureGen Facility Host Site", with prior written notice to CASH CREEK.

14. MODIFICATIONS. This Agreement shall not be modified except by written agreement of the parties hereto.

15. BINDING AGREEMENT. The parties certify, by the signatures of duly authorized representatives hereinafter affixed, that they are legally entitled to enter into this Agreement, and that they will not be violating, either directly or indirectly, any conflict of interest statute of the Commonwealth of Kentucky by performance of this Agreement. Further, the parties covenant that they presently have no conflict of interest, in any manner or degree, with the performance of duties pursuant to this Agreement.

16. AUDIT. CASH CREEK agrees that the Commerce Cabinet, Office of Energy Policy, the Finance and Administration Cabinet, the Auditor of Public Accounts, and the Legislative Research Commission, or their duly authorized representatives, shall have access to any books, documents, papers, records, or other evidence which is directly pertinent to this Agreement for the purpose of financial audit or program review. Furthermore, any books, documents, papers, records, or other evidence provided to the contracting agency, the Finance and Administration Cabinet, the Auditor of Public Accounts, or the Legislative Research Commission, which is directly pertinent to the Agreement, shall be subject to public disclosure regardless of the proprietary nature of the information, unless specific information is identified and exempted and agreed to by the Secretary of the Finance and Administration Cabinet as meeting the provisions of KRS 61.878(1)(c) prior to the execution of the Agreement. The Secretary of the Finance and Administration Cabinet shall not restrict the public release of any information that would otherwise be subject to public release if a state government agency were providing the services. It is acknowledged that CASH CREEK has an exception to this Paragraph, as outlined in an exhibit to the Memorandum of Agreement between CASH CREEK and OPTIONEE dated March 9, 2006.

17. NOTICES. All notices, requests, demands, waivers, and other communications given as provided in this Agreement shall be in writing, sent by First Class Mail, deemed effective upon mailing, and addressed as follows:

If to OPTIONEE:	Office of Legal Services for Finance and Technology Finance and Administration Cabinet 702 Capitol Avenue 188 Capitol Annex Frankfort KY 40601
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If to CASH CREEK: Cash Creek Generation, L.L.C.
 c/o THE ERORA Group, LLC
 4350 Brownsboro Road, Suite 110
 Louisville, Kentucky 40207

Either party to this Agreement may change the address at which it is to receive notices, requests, demands, waivers, and other communications, on the condition that the party first provides written notice of that change of address to the other party.

18. TERM. This Agreement is effective upon signature of all the parties. This Agreement may be executed in two counterparts, each of which shall be considered to be an original. This Agreement shall automatically terminate and become null and void without the need for any further action by any party on the earlier to occur of (i) December 31, 2010, (ii) 30 days after an announcement is made or information is received that the FutureGen Tract has not been included on the Candidate Site List announced by the FutureGen Industrial Alliance, Inc. or subsequently ceases to be considered a Candidate Site, or (iii) the recording date of the deed of conveyance between CASH CREEK and OPTIONEE of the FutureGen Tract. In such event OPTIONEE agrees to execute an affidavit to such effect if requested by a title insurance company.

19. ENFORCEMENT. Any legal action brought to enforce the terms of this Agreement shall be filed in the Franklin Circuit Court of the Commonwealth of Kentucky.

20. TERMINATION. Either party shall have the right to terminate or cancel this Agreement for cause at any time, or without cause upon thirty (30) days written notice to the other party.

The signatures below signify acceptance and approval of this Agreement by authorized representatives of GREEN GEM, CASH CREEK and the OPTIONEE as of the 3rd day of May, 2006 and may be executed in one or more counterparts.

COMMONWEALTH OF KENTUCKY

AGREED TO BY:

Date

/S/
R. B. Rudolph, Jr., Secretary
Finance and Administration Cabinet

May 3, 2006

APPROVED AS TO FORM AND LEGALITY:

/S/
Gwen Pinson, Acting General Counsel
Office of General Counsel
Finance and Administration Cabinet

May 3, 2006

/S/
George Ward, Secretary
Commerce Cabinet

May 3, 2006

APPROVED AS TO FORM AND LEGALITY:

/S/
Ellen F. Benzing
Executive Director of Legal Affairs
Commerce Cabinet

May 3, 2006

CASH CREEK GENERATION, LLC

/S/
Michael L. McInnis, Manager

May 3, 2006

AGREED TO BY:

GREEN GEM, L.L.C.

/S/
Charles T. LaFollette, Manager

May 3, 2006

EXHIBIT A

Description of the FutureGen Tract

This description **does not** represent a boundary survey and is subject to any inaccuracies which a complete boundary survey may reveal.

The FutureGen Tract is an approximately 212 acre site identified as the "Proposed FutureGen Site" on the attached drawing titled "Proposed Futuregen Site".